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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

M.S., an Individual by and through
his Guardian Ad Litem, MARY
RODGERS-VEY, *et al.*

Case No. 16-03084-BRO-RAO

[Hon. Beverly R. O'Connell]

Plaintiffs,

vs.

COUNTY OF VENTURA, *et al.*.

Defendants.

**PLAINTIFFS' SECOND REQUEST
FOR JUDICAL NOTICE IN SUPPORT
OF THEIR OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS SECOND AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF BRIAN A.
VOGEL**

DATE: February 27, 2017

TIME: 1:30 p.m.

CRTRM: 350 W. 1st St., Rm. 7C

1 TO THE COURT, TO ALL PARTIES AND TO THEIR ATTORNEYS OF
2 RECORD:

3 Pursuant to Federal Rule of Evidence 201, Plaintiffs, by and through their
4 attorneys of record, hereby request the Court to take judicial notice of the
5 following facts:

6 PLEASE TAKE NOTICE that on February 27, 2017, at 1:30 p.m., or as
7 soon thereafter as the matter may be heard in Courtroom 7C of the above-entitled
8 Court located at 350 West 1st Street, Los Angeles, California, 90012, Plaintiffs
9 Mary Rodgers-Vey as Guardian Ad Litem for M.S., and Adrian Mojica, Guardian
10 Ad Litem for O.M., will, and hereby do, request that the Court consider the
11 following documents filed of record in ruling on Defendants' Motions to Dismiss
12 Plaintiffs' Second Amended Complaint:

13 1. Certified copy of minute orders in Ventura County Superior Court Case
14 no. 2016030003, *People v Brian Joseph McKenney*; Ex. 5.

15 2. Certified copy of minute orders in Ventura County Superior Court Case
16 no. 201600123023, *People v. Jayden Anthony Sunder*; Ex. 6.

17 3. Certified copy of minute orders in Ventura County Superior Court Case
18 no. 2014025449, *People v. Daniel Webster Johnson II*; Ex.7.

19 4. Certified copy of minute orders in Ventura County Superior Court Case
20 no. 2014025449, *People v. Arturo Valtierra*; Ex.8.

21 Plaintiffs request judicial notice of these four documents in support of their
22 oppositions to the Motions to Dismiss the Second Amended Complaint.

23 The grounds for the request for judicial notice are that the foregoing
24 documents are part of the official records of the Ventura County Superior Court,
25 they are not reasonably subject to dispute, the authenticity of both the facts set
26 forth therein and the statements set forth therein are easily verifiable, and are
27
28

relevant to Plaintiffs' oppositions to all Defendants' motions to dismiss the Second Amended Complaint.

Dated: February 22, 2017 LAW OFFICES OF BRIAN A. VOGEL, PC

By: /s/ Brian A. Vogel
Brian A. Vogel

Dated: February 22, 2017 KAYE, McLANE, BEDNARSKI & LITT, LLP

By: /s/ Barrett S. Litt
Barrett S. Litt
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows for dismissal of
 3 a complaint when there is a “lack of jurisdiction over the subject matter” of the
 4 suit. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) jurisdictional attack may be facial
 5 or factual. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). In a “facial attack,”
 6 the court’s inquiry generally is confined to the allegations in the complaint. *Id.*
 7 By contrast, in a “factual attack,” the court may consider extrinsic evidence such as
 8 affidavits or other evidence necessary to decide a jurisdictional issue. *Maya v.*
 9 *Centex Corp*, 658 F.3d 1060, 1067 (9th Cir 2011).

10 In ruling on a motion to dismiss under Rule 12(b)(6) of the Federal Rules of
 11 Civil Procedure, the court may take judicial notice “of ‘matters of public record’
 12 without converting a motion to dismiss into a motion for summary judgment.”
 13 *United States v. 14.02 Acres of Land*, 547 F.3d 943, 955 (9th Cir. 2008)
 14 (*citing Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). *Accord*,
 15 *Green v. Uribe*, 2010 U.S. Dist. LEXIS 81444, *1, n. 1(C.D. Cal August 6, 2010)
 16 (“[t]he Court takes judicial notice of such ‘matters of public record,’” *citing Lee*).
 17

18 The Court has already taken judicial notice of Exhibits 1 and 2. (Dkt. 62, pp.
 19 10-11). The Court has not yet ruled on Plaintiffs’ request to take judicial notice of
 20 Exhibits 3 and 4 (Ex. 3 - California Legislative Analyst Report, “An Alternative
 21 Approach: Treating the Incompetent to Stand Trial”, dated January 3, 2012; Ex. 4
 22 - City News Group article detailing expansion of restoration of competency
 23 program, San Bernardino County, dated August 31, 2015, quoting Defendant Ahlin
 24 about the San Bernardino County ROC program).

25 Exhibits 5 – 8 are relevant to Plaintiffs’ oppositions to Defendants’ motions
 26 to dismiss the Second Amended Complaint. These documents confirm that
 27 extended wait times continue for pre-trial detainees held in the Ventura County
 28

1 Sheriff's Office Jail who have been found to be incompetent to stand trial ("IST")
2 and have been ordered to be transported for competency restoration services.

3 Exhibit 5 reveals that Brian McKenney was booked in the Ventura County
4 Jail on August 13, 2016. He was found incompetent to stand trial on November
5 17, 2016. The Ventura County Superior Court ordered him transferred to
6 Atascadero State Hospital on December 9, 2016. His "1370 Packet," was sent to
7 the Ventura County Sheriff's Transportation Unit on December 21, 2016. On
8 February 14, 2017, the transfer order to Atascadero was vacated. On February 17,
9 2017, he was ordered to be released for outpatient restorative treatment at
10 CONREP. He was released for outpatient restorative treatment CONREP on or
11 about February 20, 2017, 97 days after he was found IST and 75 days after he was
12 ordered to be transferred to Atascadero.
13

14 Additionally, Exhibit 5 confirms that the State Defendants have always had
15 the option of recommending outpatient restorative treatment for IST detainees
16 accused of felonies throughout the class period. For the very first time that
17 Plaintiffs are aware of, outpatient restorative treatment was recommended, and the
18 court ordered it for an IST detainee accused of a felony.
19

20 Exhibit 6 reveals that Jayden Sunder was booked in the Ventura County Jail
21 on March 18, 2016. He was found incompetent to stand trial on September 23,
22 2016. The Ventura County Superior Court ordered him transferred to Atascadero
23 State Hospital on November 10, 2016. His "1370 Packet," was sent to the Ventura
24 County Sheriff's Transportation Unit on December 8, 2016. On or about February
25 22, 2017, he was released from jail and presumably was transferred to Atascadero,
26 152 days since he was found IST, and 104 days since he was ordered transferred to
27 Atascadero.
28

Exhibit 7 reveals that Daniel Webster was booked in the Ventura County Jail on August 23, 2016. He was found incompetent to stand trial on November 16, 2016. The Ventura County Superior Court ordered him transferred to Atascadero State Hospital on December 7, 2016. His “1370 Packet,” was sent to the Ventura County Sheriff’s Transportation Unit on December 16, 2016. As of February 22, 2017, he has waited in custody for 98 days since he was found IST, and 77 days since he was ordered transferred to Atascadero.

Exhibit 8 reveals that Arturo Valtierra was booked in the Ventura County Jail on April 26, 2016. He was found incompetent to stand trial on November 7, 2016. The Ventura County Superior Court ordered him transferred to Atascadero State Hospital on November 28, 2016. His “1370 Packet,” was sent to the Ventura County Sheriff’s Transportation Unit on December 21, 2016. On or about February 22, 2017, he was released from jail and presumably was transferred to Atascadero, 107 days since he was found IST, and 86 days since he was ordered transferred to Atascadero.

CONCLUSION

Plaintiffs therefore respectfully request that the Court take judicial notice of Exhibits 5through 8 in consideration of Plaintiffs' opposition to Defendants' motion to dismiss the Second Amended Complaint.

Dated: February 22, 2017 LAW OFFICES OF BRIAN A. VOGEL, PC

By: /s/ Brian A. Vogel
Brian A. Vogel

Dated: February 22 , 2017 KAYE, McLANE, BEDNARSKI & LITT, LLP

By: /s/ David S. McLane
David S. McLane
Attorneys for Plaintiffs